

Notice of Allowability

Application No.

09/830,176

Examiner

Joseph T. Weitach

Applicant(s)

DOUGHERTY ET AL.

Art Unit

1632

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address--

All claims being allowable, PROSECUTION ON THE MERITS IS (OR REMAINS) CLOSED in this application. If not included herewith (or previously mailed), a Notice of Allowance (PTOL-85) or other appropriate communication will be mailed in due course. **THIS NOTICE OF ALLOWABILITY IS NOT A GRANT OF PATENT RIGHTS.** This application is subject to withdrawal from issue at the initiative of the Office or upon petition by the applicant. See 37 CFR 1.313 and MPEP 1308.

1. ☒ This communication is responsive to 9/6/2006.
2. ☒ The allowed claim(s) is/are 7 and 8.
3. ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
 - a) ☐ All b) ☐ Some* c) ☐ None of the:
 1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this national stage application from the International Bureau (PCT Rule 17.2(a)).

* Certified copies not received: _____.

Applicant has THREE MONTHS FROM THE "MAILING DATE" of this communication to file a reply complying with the requirements noted below. Failure to timely comply will result in ABANDONMENT of this application.

THIS THREE-MONTH PERIOD IS NOT EXTENDABLE.

4. ☐ A SUBSTITUTE OATH OR DECLARATION must be submitted. Note the attached EXAMINER'S AMENDMENT or NOTICE OF INFORMAL PATENT APPLICATION (PTO-152) which gives reason(s) why the oath or declaration is deficient.
 5. ☐ CORRECTED DRAWINGS (as "replacement sheets") must be submitted.
 - (a) ☐ including changes required by the Notice of Draftperson's Patent Drawing Review (PTO-948) attached
 - 1) ☐ hereto or 2) ☐ to Paper No./Mail Date _____.
 - (b) ☐ including changes required by the attached Examiner's Amendment / Comment or in the Office action of Paper No./Mail Date _____.
- Identifying indicia such as the application number (see 37 CFR 1.84(c)) should be written on the drawings in the front (not the back) of each sheet. Replacement sheet(s) should be labeled as such in the header according to 37 CFR 1.121(d).
6. ☐ DEPOSIT OF and/or INFORMATION about the deposit of BIOLOGICAL MATERIAL must be submitted. Note the attached Examiner's comment regarding REQUIREMENT FOR THE DEPOSIT OF BIOLOGICAL MATERIAL.

Attachment(s)

1. ☐ Notice of References Cited (PTO-892)
2. ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
3. ☐ Information Disclosure Statements (PTO/SB/08),
Paper No./Mail Date _____
4. ☐ Examiner's Comment Regarding Requirement for Deposit
of Biological Material
5. ☐ Notice of Informal Patent Application
6. ☐ Interview Summary (PTO-413),
Paper No./Mail Date _____.
7. ☐ Examiner's Amendment/Comment
8. ☒ Examiner's Statement of Reasons for Allowance
9. ☐ Other _____.

DETAILED ACTION

This application is 371 national stage filing of PCT/US99/25477, filed October 29, 1999, which claims benefit to provisional application 60/106,533, filed October 31, 1998.

Applicants' after final amendment filed September 6, 2006, has been received and entered. Claims 1-6 and 9-19 have been cancelled. Claims 7 and 8 are pending.

Election/Restrictions

Applicant's election of Group I, was acknowledged. The election was treated as an election without traverse because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, (MPEP § 818.03(a)).

Reasons for Allowance

The following is an examiner's statement of reasons for allowance:

As indicated previously, claims 7 and 8 were allowed. The cited art of record teaches that myeloid committed cells were known to be present in the spleen as early as 1982 in the prior art (see Magli *et al.* Nature, 1982) or Reisner, US Patent 5,652,373 (in particular paragraphs 28-34 and 45). These cells represented a non-renewable and short lived source of such a cell type as summarized in the instant specification (page 2, lines 25-33). Given these art recognized limitations to various sources of myeloid stem cells, in particular the spleen, there is insufficient motivation in the art of record to use the spleen as a source of myeloid committed stem cells in methods of expressing myeloid specific proteins. Importantly, the present specification

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provides the necessary methodology for the conditions of isolating myeloid stem cells that is clearly differentiated from that in the art of record. Further, these isolated cells now capable of proliferation serve as a source of cells capable for use in expressing a gene of interest.

Any comments considered necessary by applicant must be submitted no later than the payment of the issue fee and, to avoid processing delays, should preferably accompany the issue fee. Such submissions should be clearly labeled "Comments on Statement of Reasons for Allowance."

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Joseph Woitach whose telephone number is (571) 272-0739.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Ram Shukla, can be reached at (571) 272-0735.

Any inquiry of a general nature or relating to the status of this application should be directed to the Group analyst Dianiece Jacobs whose telephone number is (571) 272-0532.

Joseph T. Woitach



JOSEPH WOITACH, PH.D.
PRIMARY EXAMINER